No. 94-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

FORTIS MORSE, KENNETH CURTIS BARTHOLOMEW, AND KIMBERLY J. ENDERSON,

Appellants,

v.

OLIVER NORTH FOR U.S. SENATE COMMITTEE, INC. REPUBLICAN PARTY OF VIRGINIA AND ALBEMARLE COUNTY REPUBLICAN COMMITTEE,

Appellees.

On Appeal from the United States District Court for the Western District of Virginia

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Does section 5 of the Voting Rights Act of 1965 require preclearance of a political party's decision to hold a convention and to impose a non-waivable $45 fee on all voters who wish to participate in the process of nominating that party's candidate for United States Senator?

2. Does section 5 of the Voting Rights Act of 1965 require preclearance of a political party's decision to hold a convention and to impose a non-waivable $45 filing fee on all candidates for the position of delegate to a state convention called to nominate that party's candidate for United States Senator?

3. Can individual voters who have been forced to pay an illegal poll tax or who claim to have been deterred from participating in an election by the existence of such a tax bring suit under section 10 of the Voting Rights Act, which explicitly outlaws poll taxes?

PARTIES

The following were parties in the courts below:

Fortis Morse;

Kenneth Curtis Bartholomew; and

Kimberly J. Enderson

Plaintiffs;

The Oliver North for U.S. Senate Committee, Inc.;

The Republican Party of Virginia; and

The Albemarle County (Virginia) Republican Committee

Defendants.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion and order of the three-judge district court are contained in the Appendix to this Jurisdictional Statement [hereafter "J.S. App."], at pages A-2 to A-13; the district court's opinion is reported only on Lexis, 1994 U.S. Dist. LEXIS 7112.

JURISDICTION

The district court entered judgment against appellants on May 18, 1994. J.S. App. at A-13. The Notice of Appeal was filed on June 8, 1994. J.S. App. at A-19. This Court has jurisdiction under 28 U.S.C. § 1253.

STATUTORY PROVISIONS INVOLVED

This case involves section 5 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973c, which is reprinted in the Appendix at pages A-15 to A-17, and section 10 of the Voting Rights Act of 1965, 42 U.S.C. § 1973h, which is reprinted in the Appendix at pages A-17 to A-18.

STATEMENT OF THE CASE

Since 1964, the Republican Party of Virginia ("RPV" or "the Party") has used a variety of methods for nominating its candidates for U.S. Senator.[1] In 1964 and 1978, for example, the Party's State Central Committee chose the nominee, while in several other years, the nominee was chosen by a statewide convention. In 1990, the RPV decided to choose its nominee by primary, but the primary was canceled when no challenger opposed the renomination of the Republican incumbent.

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[1] This case is before the Court following the district court's dismissal for failure to state a claim. Accordingly, the facts are taken from appellants' complaint and various affidavits and statements made by appellees.

In December 1993, the Central Committee decided to switch back to selecting the party's nominee through a convention. Accordingly, it issued a call for a convention to occur in June 1994, pursuant to state law governing the timing of political party nominating conventions. *See* Va. Code § 24.2-510(1). All registered voters who were in accord with the Party's principles and who were willing if requested to declare their intent to support the Party's eventual nominee were entitled to participate in local mass meetings.[2] But any voter who wished to participate at the state level, where the actual nominating decision was made, was required to file as a "delegate" and pay a non-waivable $35 or $45 registration fee.

Under the RPV's own rules, delegates were to be "elected" at the mass meetings to attend the convention. In fact, however, as a matter of longstanding party practice,[3] *any* voter who pledged to support the Party's nominee and paid the fee was certified as a delegate and, when he or she reached the convention, was free to vote for the candidate of his or her choice.[4] Over 14,600 voters were certified as "delegates" eligible to attend the convention and vote their preferences. In effect, the state convention operated, as it had in the past, as a "great indoor primary," Frank B.

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[2] Virginia does not have party registration.

[3] *See* Transcript of Oral Argument at 30 (May 18, 1994) (noting that while the party's rules provide for the selection of delegate slates and for the "instruct[ion of] delegations" on how to vote, "the campaigns, as a matter of tactics to maintain Party unity, haven't been doing it").

[4] The weight attached to an individual's vote is governed by a formula that takes into account the level of support for Republican presidential and gubernatorial candidates in the voter's city or county. Appellants have not challenged any of the Party's internal rules regarding how voting at conventions is to be conducted.

Atkinson, The Dynamic Dominion: Realignment and the Rise of Virginia's Republican Party Since 1945, at 343 (George Mason Univ. Press 1992).

Appellants Fortis Morse, Kenneth Curtis Bartholomew, and Kimberly Enderson are registered voters in Virginia. Morse and Enderson have long been active in Republican politics; Bartholomew is an independent. All three wanted to participate in selecting the Party's 1994 senatorial nominee.

Both Bartholomew and Enderson, however, were deterred from attending the convention by the $45 fee. Thus, they were completely excluded from participating in the Party's actual nominating process.

On February 28, 1994, Morse sought, from the Albemarle County Republican Committee (which under party rules was responsible for collecting the fee and certifying "delegates"), a waiver of the fee on the grounds of economic hardship. A Committee official told Morse that the fee was mandatory but informed him that one of the candidates was paying the fees of voters who supported him. Ultimately, the Albemarle County Coordinator of the Oliver North for U.S. Senate Committee gave Morse $45 to reimburse him for the fee, indicating that if Morse did not attend the convention "we'll hunt you down." Morse subsequently repaid the $45 to the North Committee and attended the convention, where he supported North's rival, James Miller.

Following investigation of the pervasiveness of the reimbursement scheme, and a month before the convention, appellants filed this lawsuit in the United States District

Court for the Western District of Virginia.[5] They alleged that the filing fee constituted a "standard, practice, or procedure with respect to voting" within the meaning of section 5 of the Voting Rights Act; because the Party had never received preclearance for the fee, or its decision to raise the fee over time, its imposition violated section 5. They also alleged that the Party's imposition of a filing fee violated section 10 of the Voting Rights Act, which prohibits the use of poll taxes. In addition to these statutory claims against the Party, appellants raised constitutional challenges to the fee under the Equal Protection Clause of the Fourteenth Amendment and the Twenty-Fourth Amendment. Finally, they alleged that the North campaign's practice of paying or offering to pay the fee for voters who indicated a commitment to support Oliver North violated section 11 of the Voting Rights Act of 1965 as amended. They invoked the district court's jurisdiction under 28 U.S.C. §§ 1331 and 1343 and under 42 U.S.C. §§ 1973h(c) and 1973j(f).

Appellants did *not* seek to halt, delay, or disrupt the convention. Rather they sought only an injunction permitting all individuals who were otherwise qualified -- because they were registered voters prepared to pledge their support to the ultimate Republican nominee -- to attend the convention. In addition, they sought declaratory relief and a permanent injunction against requiring a registration fee unless federal preclearance was first obtained.

A three-judge district court was convened to hear

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[5] The district court stated that the appellants delayed over five months in filing this action. J.S. App. at A-5. This statement presupposes that appellants should have filed suit as soon as the call for the convention was issued in December 1993. This would have required them to act without first attempting to register or to seek a waiver, as appellant Morse did, and without any investigation of the factual or legal bases of their claims. *See* Fed. R. Civ. P. 11.

appellants' section 5 and section 10 claims. After an expedited briefing process, that court held oral argument on May 18, and on the same day, issued its opinion. It remanded appellants' constitutional and section 11 claims to the single-judge district court[6] and dismissed appellants' claims under sections 5 and 10.

With regard to appellants' section 5 claim, the district court recognized that section 5 extends to political parties. But it thought that section 5's reach was limited to a party's conduct of a primary election. Neither a party's practices relating to a nominating convention nor the process of selecting delegates to such a convention through mass meetings or party canvasses was subject to section 5 review. *See* J.S. App. at A-8 to A-11. According to the district court, this result was compelled by this Court's summary affirmance in *Williams v. Democratic Party of Georgia*, 409 U.S. 809 (1972).

With regard to appellants' section 10 claim, the district court held that the Act did not authorize suits by private citizens.[7] It concluded that only the Attorney General is authorized to bring suit against illegal poll taxes. J.S. App. at A-11 to A-12. Individual voters who have been forced to

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[6] Appellants do not challenge the three-judge court's decision to remand the constitutional and section 11 claims. Simultaneously with their filing of the Notice of Appeal in this proceeding, appellants voluntarily dismissed their section 11 claim against the Oliver North for U.S. Senate Committee, since the convention had already occurred and they had sought only declaratory and injunctive relief against this defendant. Appellants also moved to postpone consideration of their constitutional claims against the RPV and the Albemarle County Republican Committee pending this Court's resolution of the statutory issues presented by this appeal.

[7] This was not an argument raised by defendants and the district court never asked appellants to address this question.

pay such a tax, or who have been deterred from voting because of it, the district court declared, have no cause of action under section 10.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

This case raises important questions about the scope of section 5's preclearance requirement. With one exception, whose scope was misinterpreted by the court below, every other court to have reached the question has required political parties to preclear changes in rules relating to their nomination of candidates for public office. The decision of the court below completely ignored contrary authority and misinterpreted the regulations promulgated by the Attorney General, who has consistently required preclearance and has interposed objections preventing party rules from taking effect. The decision in this case undermines section 5's "self-monitoring" regime, which requires covered entities to identify and submit changes in their election law. *Clark v. Roemer*, 111 S.Ct. 2096, 2104 (1991). And it leaves political parties, individual citizens, and lower courts uncertain as to when political parties must seek preclearance. Accordingly this Court should either summarily reverse the judgment of the court below or should note probable jurisdiction. To let stand the lower court's judgment in this case would only magnify these uncertainties many times over and prompt further litigation.

This case also raises important questions about judicial enforcement of the Voting Rights Act, which has relied largely on lawsuits brought by private individuals. This Court, the lower courts, and Congress have repeatedly reaffirmed private rights of action under the Act, despite the absence of explicit authorization. This lawsuit marks the

first time that any federal court has held that a citizen whose right to vote was denied or abridged cannot bring suit.

I. THE DECISION OF THE COURT BELOW REPRESENTS SO EXTREME A DEPARTURE FROM WELL-SETTLED PRINCIPLES ABOUT THE SCOPE OF SECTION 5 THAT IT MUST BE REVERSED

A. *Section 5 clearly covers the activities of political parties.*

Section 5 of the Voting Rights Act requires that, before "the election law of a covered State [is altered] in even a minor way," the State or the entity responsible for the change must obtain preclearance from the United States Attorney General or the United States District Court for the District of Columbia. *Dougherty County Board of Education v. White*, 439 U.S. 32, 37 (1978). This Court has repeatedly held that section 5 of the Voting Rights Act should be given the "broadest possible scope." *Id.* at 38; *Allen v. State Board of Elections*, 393 U.S. 544, 567 (1969).

That section 5 reaches the activities of political parties within covered jurisdictions has been well-established law for over twenty years. *See, e.g., MacGuire v. Amos*, 343 F. Supp. 119 (M.D. Ala. 1972) (three-judge court); *Wilson v. North Carolina State Board of Elections*, 317 F. Supp. 1299 (M.D.N.C. 1970) (three-judge court). The express language of the Voting Rights Act supports this universal interpretation. Section 2, for example, provides that the Act is violated when "the political processes leading to nomination or election" are not equally open to all voters.

42 U.S.C. § 1973(b).[8] Similarly, section 14(c)(1) defines voting to include "all action necessary to make a vote effective in any primary, special, or general election ... with respect to candidates for public or party office." 42 U.S.C. § 1973*l* (c)(1). Congress clearly intended that the Voting Rights Act would reach state party conventions as the legislative history of section 14(c)(1) expressly states: "an election of delegates to a State party convention would be covered by the act." H.R. Rep. No. 439, 89th Cong., 1st Sess., *reprinted in* 1965 U.S. Cong. Code & Ad. News 2437, 2464.

The Attorney General, whose long-standing administrative interpretation of section 5 is entitled to "considerable deference," *see, e.g., NAACP v. Hampton County Election Commission*, 470 U.S. 166, 178-79 (1985); *Dougherty County*, 439 U.S. at 39; *United States v. Sheffield County Board of Commissioners*, 435 U.S. 110, 131 (1978), has consistently construed section 5 to reach political party rules relating to the candidate nomination process. 28 C.F.R. § 51.7. Accordingly, he has repeatedly interposed objections to party rules when he has been unable to conclude

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[8] Sections 2 and 5 are to be construed in tandem, and this Court has consistently construed section 5 to be at least as broad as section 2. *See* Chisom v. Roemer, 111 S.Ct. 2354, 2367 (1991); H.R. Rep. No. 97-227, p. 28 (1982). The recent decision in Holder v. Hall, 62 U.S.L.W. 4728 (1994), is not to the contrary. First, there was no opinion for the Court. Second, the clear import of Justice Kennedy's and Justice O'Connor's opinions is that section 5 is, if anything, *broader* in its scope than section 2. *See Holder*, 62 U.S.L.W. at 4731 (Kennedy, J.) (suggesting that the requirement of preclearance under section 5 does not necessarily mean a practice is also vulnerable to attack under section 2); *id.* at 4732 (O'Connor, J., concurring in part and concurring in the judgment) (stating that whether a section 2 dilution claim may be brought raises "more difficult questions" than whether a practice marks a change with respect to voting under section 5); *cf. id.* at 4750 (Blackmun, J., dissenting) (stating that the scope of section 2 and section 5 are identical).

that the rules had neither a discriminatory purpose nor a discriminatory effect. *See* Extension of the Voting Rights Act: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Judiciary Comm., 97th Cong., 1st Sess. 2264, 2271 (1981) (appendix to letter from James P. Turner, Acting Assistant Attorney General in charge of the Civil Rights Division, reporting on section 5 objections interposed to changes with regard to primary elections and conventions) [hereafter "Turner Appendix"].

B. *The district court completely misread the administrative regulation on which it claimed to rely.*

The district court thought that section 51.7 applied *solely* to the conduct of formal primary elections. J.S. App. at A-10. But the regulation imposes no such limit. "Changes with respect to the conduct of primary elections" are only one *example* of the sort of change which requires preclearance. The regulation clearly defines the covered changes as those that (a) "relate to a public electoral function of the party ... (b) if the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of section 5." 28 C.F.R. § 51.7. Had the Attorney General intended to limit preclearance to primaries, he would have said so, rather than using them as an example of a covered change. .

In this case, both of the conditions set out in the regulation are clearly satisfied. First, the RPV was patently performing a public electoral function. It was engaged in the process of nominating a candidate for the United States Senate, and, as a political party within the definition of Virginia law, thereby automatically providing to that candidate a place on the general election ballot. *See* Va.

Code § 24.2-511 (providing for the certification, and placement on the general election ballot, of party nominees). Second, that activity was explicitly authorized by the Commonwealth of Virginia, a covered jurisdiction. *See* Va. Code § 24.2-509(A) (authorizing parties to choose their method for nominating Senatorial candidates); § 24.2-510(1) (setting the schedule for nominations made by methods other than primaries).

The regulation's examples of changes that lie outside section 5's scope further illustrate the flaw in the district court's reasoning. Each of them -- "the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms" 28 C.F.R. § 51.7 -- involves a party's constitutionally protected decisions about its substantive message. By contrast, the practice challenged in this case -- the imposition of a fee on otherwise qualified members of the Republican Party -- has no ideological content whatsoever.[9] In short, to the extent that the district court's holding relied on the Attorney General's regulation, the court was entirely mistaken.

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[9] The Call for the Convention expressly provides that "[a]ll legal and qualified voters under the laws of the Commonwealth of Virginia, regardless of race, religion, national origin,or sex, who are in accord with the principles of the Republican Party of Virginia and who, if requested, express in open meeting, either orally or in writing as may be required, their intent to support all of its nominees for public office in the ensuing election, may participate as members of the Republican Party of Virginia in its Mass Meetings, Party Canvasses, Conventions or Primaries encompassing their respective Election Districts."

C. *The district court's reliance on* Williams v. Democratic Party *was entirely misplaced*

The district court's reliance on *Williams v. Democratic Party of Georgia*, No. 16286 (N.D. Ga. April 6, 1972), *summarily aff'd*, 409 U.S. 809 (1972), was equally flawed.[10] *Williams* concerned the rules for electing delegates to the Democratic National Convention. The party rule at issue provided that delegates would be elected at open conventions in each of Georgia congressional districts at which "any resident ... who subscribed to the principles of the Democratic Party" could participate. Slip op. at 2.

The district court in *Williams* was "convinced that voting rights connected with the delegate election process are the type of rights Congress intended to safeguard." Slip op. at 4. It quoted Congress' statement, in the legislative history of the 1965 Act that "*an election of delegates to a State party convention would be covered by the Act.*" Slip op. at 4 (emphasis in original) (quoting H.R. Rep. No. 439, 89th Cong., 1st Sess. (1965), *reprinted in* 1965 U.S. Cong. Code & Ad. News 2437, 2464). But the *Williams* court reluctantly concluded, in "the absence of any procedure for submitting changes in party rules under Section 5," that section 5 preclearance could not be required since "[t]he State Party cannot force the State to seek approval for the party's rules and regulations." Slip op. at 5. It was "under *these* circumstances" that *Williams* concluded that section 5 did not

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10 The district court's decision in *Williams* is unpublished. Because this Court granted the appellants' motion to dispense with printing the jurisdictional statement, *see* 409 U.S. 809 (1972), the decision is unavailable in the Briefs and Records Room of the Court's Library or from the Library of Congress. Accordingly, appellants have lodged a copy of the decision with the Clerk's office.

apply. Slip op. at 6 (emphasis added).

Thus, *Williams* provides no warrant for the decision of the court below that conventions are exempted from section 5. The court in *Williams* recognized that Congress intended to reach state party conventions but thought that the absence of a mechanism for state parties to seek preclearance frustrated Congress' intent. Since *Williams* was decided, however, the Attorney General has promulgated regulations under 28 C.F.R. § 51.7 that provide a "way for the State Party to gain the required federal approval." *Williams*, slip op. at 5. Thus, the sole rationale for *Williams*'s holding no longer exists. In light of these changed circumstances and the fact that *Williams* did not involve the election of delegates to a state convention within a covered jurisdiction, this Court's summary affirmance of *Williams* does not support the decision of the court below in this case. The limited and uncertain scope of this Court's unexplained order has no precedential effect in to the present case. *See Anderson v. Celebrezze*, 460 U.S. 780, 785 n. 5 (1983); *Mandel v. Bradley*, 432 U.S. 173, 176 (1977) (per curiam).

That *Williams* simply does not support the district court's analysis in this case is further confirmed by the fact that other three-judge courts have consistently held that section 5 covers political parties and extends beyond primary elections. *Fortune v. Kings County Democratic County Committee*, 598 F. Supp. 761 (E.D.N.Y. 1984) (three-judge court), for example, required preclearance of a county executive committee rule permitting committee members *who had been appointed* to participate in decisions to fill vacancies in nominations for public office (when, for example, a candidate died after being nominated) and in decisions to permit nonparty members to run as Democrats. The *Fortune* court found preclearance required because the change affected a "public electoral function," *id.* at 765,

namely, who would appear on the general election ballot. Similarly, *Hawthorne v. Baker*, 750 F. Supp. 1090 (M.D. Ala. 1990) (three-judge court), required preclearance of internal Democratic Party rules eliminating the right of certain organizations *to appoint* members of state and county party committees and limiting the members who could be *selected* by other committee members. Finally, *Wilson v. North Carolina State Board of Elections*, 317 F. Supp. 1299 (M.D.N.C. 1970) (three-judge court), required preclearance of a party's decision, authorized by state law, to rotate nomination for state legislative seats among the various counties making up the legislative districts.

In short, neither the case law nor the administrative regulations support the district court's cramped interpretation of section 5.

D. *The district court's categorical exemption of party rules dealing with conventions conflicts with this Court's decision in* Allen v. State Board of Elections *that the decision to abandon election in favor of another method of filling an office requires preclearance.*

The district court held that "a change in political party rules dealing not with primary elections, but instead with a party convention, canvass, or mass meeting" is exempt from section 5. J.S. App. at A-8. The implications of that holding demonstrate why it simply cannot be the law.

In 1990, the Party decided to conduct a primary to determine its nominee for United States Senator. Under Virginia law, that primary would have been open to all voters. *See* Va. Code § 24.2-530. No voter would have

been required to pay a fee to participate. Nor would a voter have had to travel to, or incur the expenses of, a weekend-long convention in order to have his or her say in the choice of nominee.[11] In 1994, by contrast, the Party abolished the ability of individuals to vote in a primary election to fill the position of Republican nominee for United States Senator. Both *Allen v. State Board of Elections* and *Presley v. Etowah County Commission* clearly hold that a decision to abandon elections and to fill a position by other means is covered by section 5. *See Allen*, 393 U.S. at 569-70; *Presley*, 112 S.Ct. 820, 828-29 (1992); *see also* 28 C.F.R. § 51.13(i). The district court's decision here conflicts directly with that of the three-judge court in *Valteau v. Edwards*, No. 84-1293 (E.D. La. Mar. 21, 1984) (three-judge court), *stay denied*, 466 U.S. 909 (1984), which held that Louisiana could not switch from a primary to a caucus system for selecting its delegates to national political conventions in light of an objection by the Attorney General. Indeed, the district court's decision provides a powerful incentive for parties to abandon primaries, since it offers the hope that they can avoid section 5 by doing so.

Particularly under the circumstances of this case, where the party not only abandoned the primary, thereby eliminating the right to vote in the primary, but replaced it with a process that imposed an explicit financial burden on voters who wish to participate in the nomination process, the potential for discrimination is clear. Indeed, the district court's decision in this case would permit even more blatant discrimination. Under its rationale, a party could require delegates to its convention to have college degrees even if that would effectively bar members of minority groups from

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[11] Ultimately, no primary was held because no challenger filed to oppose incumbent Republican Senator John Warner. *See* Va. Code § 24.2-526.

attending. Similarly, a party could restrict attendance at mass meetings to individuals who own their own homes, even though this might discriminate against minority group members in areas where they are more likely to live in apartments. Even facially discriminatory measures -- like requiring Hispanics to pay higher filing fees than whites, or barring blacks from party canvasses altogether -- would be exempt from the preclearance process. Such a result would flout Congress' justifiable determination, in jurisdictions such as Virginia, "to shift the advantage of time and inertia from the perpetrators of the evil to its victims." *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966). This shift in advantage is all the more appropriate in cases such as this because Virginia has a history of restrictive voting practices involving economic restrictions on the franchise. *See, e.g.*, *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *Harman v. Forssenius*, 380 U.S. 528 (1965). Requiring the victims to bring suit to stop such clearly discriminatory practices would undermine the central purpose of section 5. The district court's decision aggravates precisely the problems Congress tried to solve.

II. SECTION 5 REQUIRES PRECLEARANCE OF THE RPV'S DECISION TO IMPOSE A $45 FEE EITHER BECAUSE THE FEE INVOLVES A CANDIDATE QUALIFICATION FOR THE POSITION OF DELEGATE OR BECAUSE THE FEE REPRESENTS A PREREQUISITE TO VOTING AT THE CONVENTION.

In *Dougherty County Board of Education v. White*, 439 U.S. 32, 41-43 (1978), this Court squarely held that section 5 covers changes in the qualifications required for candidates for public office. *See also Presley v. Etowah County Commission*, 112 S.Ct. at 827. In particular, a decision to

impose, or raise, filing fees is a change requiring preclearance. *See Dougherty County*, 439 U.S. at 40-41; *see also* H.R. Rep. No. 97-227, 97th Cong., 1st Sess. 18 (1981) (identifying filing fees as a part of the electoral process covered by § 5); Turner Appendix at 2252, 2253, 2256 (reporting Department of Justice objections under § 5 to filing fees). *Cf. Bullock v. Carter*, 405 U.S. 134, 144 (1972) (filing fees can restrict the field of candidates and thus "ten[d] to deny some voters the opportunity to vote for a candidate of their choosing").

The district court thought that the filing fees imposed by the RPV did not require preclearance because local party members "selec[t] delegates to the state nominating convention, not through an election, but through local conventions, mass, meetings, and party canvasses." J.S. App. at A-8 to A-9. As a factual matter, the district court was simply wrong. First, the Party's Plan of Organization -- its governing document[12] -- defines a "party canvass" as a "method of *electing* ... delegates to conventions," RPV Party Plan, Art. II, ¶ 22 (emphasis added); *see also* Art. VIII, § H,¶ 4 (authorizing "the Mass Meeting, Party Canvass, *or* [local] Convention *electing* the delegates" to a state convention to instruct its delegation on specific issues) (emphasis added). As the party's executive director explained, "[p]articipants at mass meeting *elect* ... delegates

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[12] *See* Affidavit of David S. Johnson (Executive Director of the RPV), ¶ 1 and Appendix A. Because this case was litigated on an expedited basis and disposed of on a motion to dismiss, the record is rather sparse. Moreover, although the district court acknowledged that it was required to take the facts in the light most favorable to the appellants, *see* J.S. App. at A-3, it nonetheless made several unfavorable factual findings about the nature of the RPV's nominating process. For example, appellants alleged in their complaint that delegates are "elected" in county meeting, *see* Complaint ¶ 13, but the district court nonetheless concluded they were not. *See* J.S. App. at A-10 to A-11.

to state ... conventions," canvasses or local conventions being simply alternatives to perform the "same" function. Affidavit of David S. Johnson (Executive Director of the RPV), ¶ 5. If delegates to a state convention are chosen by a process in which individual voters meet together to decide who should attend, that process involves voting within the meaning of the Voting Rights Act. This Court long ago warned against permitting "a variation in the result from so slight a change in form" in cases involving the right of qualified voters to participate in the nomination process. *Smith v. Allwright,* 321 U.S. 649, 661 (1944).

But there is a more fundamental reason why preclearance was required. Whatever the formal nature of the RPV's nominating process, the Party was in fact conducting the functional equivalent of a primary, as appellants alleged in their complaint, ¶¶ 13-15. *See also* Atkinson, *supra* at 343 (describing the RPV's 1978 senatorial nominating convention as a "great indoor primary"). The RPV's decision to call its selection mechanism a "convention" rather than a "primary" is no different from the decision of the Texas Jaybirds' -- an informal political association -- to call their nomination process a "straw poll" rather than a "primary." This Court invalidated the Jaybirds' straw poll in *Terry v. Adams*, 345 U.S. 461 (1953). In *Terry*, this Court held that a racially exclusive private organization's restriction of its election *prior to* the primary violated the Fifteenth Amendment because it formed an integral part of the electoral process that ultimately resulted in the election of public officials. As this Court's decision in *Terry* shows, the constitutional guarantee of equality in voting cannot be evaded by verbal quibbling over what a party calls its nominating event. The Voting Rights Act was passed in part precisely to enforce the Fifteenth Amendment. *See South Carolina v. Katzenbach*, 383 U.S. at 326-27.

As the RPV's process actually operated, every voter who was willing to pledge his or her support to the Party's nominee and to pay the filing fee was entitled to be certified as a "delegate." Every voter who showed up at the convention was entitled to vote for the candidate of his or her choice. The "filing fee" was simply the cost of voting. It was the functional equivalent of a poll tax. Under these circumstances, the imposition of the $45 fee as a precondition to casting a vote for a nominee for public office constitutes a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting." Voting at the Republican state convention was not like voting in a private club or voting for members of the All-Star team, *see Chisom v. Roemer*, 111 S.Ct. at 2372 (Scalia, J., dissenting). Instead, it was in every respect part of the electoral process regulated by the Voting Rights Act. Just as clearly, the Party's repeated increases of the fee since November 1, 1964, the triggering date for section 5 coverage, *see* J.S. App. at A-4, represent changes in voting qualifications or prerequisites within the meaning of section 5.

III. THE DISTRICT COURT'S DECISION THAT INDIVIDUALS SUBJECTED TO AN ILLEGAL POLL TAX HAVE NO CAUSE OF ACTION UNDER SECTION 10 OF THE VOTING RIGHTS ACT CONFLICTS WITH CONGRESSIONAL INTENT, THIS COURT'S DECISION IN *ALLEN*, AND THE STRUCTURE OF THE VOTING RIGHTS ACT GENERALLY.

The district court held that private individuals who have been forced to pay an illegal poll tax, or who have been deterred by such a tax from voting at all, have no cause of action under section 10 of the Voting Rights Act, 42 U.S.C. § 1973h, the section of the Act that explicitly outlaws poll taxes. *See* J.S. App. at A-11 to A-12. Its conclusion rests

on two factors: the absence of any express authorization of private lawsuits and the express authorization of suits by the Attorney General.

The first prong of the district court's analysis is completely refuted by this Court's recognition of private rights of action under both sections 2 and 5 of the Act, *neither* of which contains an express private right of action. Nonetheless, Congress clearly intended to permit private enforcement. *See, e.g.*, S. Rep. No. 97-417, p. 30 (1982) ("reiterat[ing]" the existence of a private right of action under Section 2, as has been clearly intended by Congress since 1965").

This Court's analysis of private rights of action in section 5 cases shows the flaws in the district court's reasoning. The district court's reliance on *Allen* was clearly misplaced.

First, *Allen* noted the language in section 5 providing that "no person" should be denied the right to vote by an unprecleared provision. *Id.* at 555. "Analysis of this language in light of the major purposes of the Act indicates that appellants may seek a declaratory judgment" that section 5 preclearance is required. *Id.* Similarly, section 10 of the Act contains congressional findings regarding "the constitutional right of citizens" to vote and highlights the exclusion of "persons of limited means" and the economic hardship imposed on such "persons."

Second, *Allen* noted that section 12(f) of the Act -- its general jurisdictional provision -- grants jurisdiction over suits under the Act to district courts "without regard to whether *a person* asserting rights under the provisions of this Act" has exhausted administrative remedies. *Allen*, 393 U.S. at 555 n.18 (emphasis in *Allen*). Read in tandem with the

general voting rights jurisdictional provision, 28 U.S.C. § 1343, the Court suggested that section 12(f) "might be viewed as authorizing private actions." *Allen*, 393 U.S. at 555 n. 18. Since *Allen*, literally thousands of private plaintiffs have relied on section 12(f) to provide a basis for district court jurisdiction over private lawsuits under a variety of sections of the Act. Appellants' complaint in this case specifically invoked both section 12(f) of the Voting Rights Act and section 1343 as bases for the district court's jurisdiction.

Third, *Allen* explained that the Voting Rights Act's specific authorization of suits by the Attorney General was included "to give the Attorney General power to bring suit to enforce what might otherwise be viewed as 'private' rights." *Allen*, 393 U.S. at 555 n. 18. That is clearly true of section 10(b). Nothing in section 10(b) even remotely suggests that Congress intended to make the Attorney General the sole enforcer of a prohibition on poll taxes. Indeed, the right not to be subject to a poll tax is clearly a private right, as well as a matter of public concern.

Finally, *Allen* declared that "[t]he achievement of the Act's laudable goal could be severely hampered ... if each citizen were required to depend solely on litigation instituted at the discretion of the Attorney General." *Allen*, 393 U.S. at 556. That is as true of actions under section 10 of the Act as it is of those under section 5. Especially given the fact that poll taxes violate both the Equal Protection Clause of the Fourteenth Amendment, *see Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), and the Twenty-Fourth Amendment, it is hardly credible to believe that Congress intended to deny the right to sue to individuals who have been forced to pay an illegal exaction in order to participate, *cf. Harman v. Forssenius*, 380 U.S. at 533 n. 6 (finding individual standing under the Constitution), or to provide no

relief under the Act to individuals who have actually been excluded from the political process. It would be irrational for Congress to exclude from the statutory scheme an action which is available under the constitutional provisions.

CONCLUSION

This case represents a dramatic departure from well-settled law about the scope of section 5 and the right of private parties to enforce the Voting Rights Act . Accordingly, this Court should either summarily reverse the judgment of the court below or should note probable jurisdiction of this appeal.

Respectfully submitted,

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Appendix

CONTENTS OF APPENDIX

OPINION OF MAY 18, 1994

In the United States District Court
for the Western District of Virginia
at Charlottesville

Fortis Morse, Kenneth Curtis Bartholomew, and Kimberly J. Enderson,	]
Plaintiffs,	]
	] Civil Action No.
v.	] 94-0025-C
	]
	] Memorandum
Oliver North for U.S. Senate Committee, Inc., Republican Party of Virginia, and Albemarle County Republican Committee,	] Opinion
Defendants.	]

PER CURIAM:

Fortis Morse, Kenneth Curtis Bartholomew, and Kimberley J. Enderson, plaintiffs, brought this action against the Oliver North for U.S. Senate Committee, Inc. (North Committee), the Republican Party of Virginia (the Party), and the Albemarle County Republican Committee (County Committee), defendants, seeking declaratory, injunctive, and monetary relief and costs for alleged violations of three sections of the Voting Rights Act of 1965, 42 U.S.C. § 1971 et seq., and the Fourteenth and Twenty-Fourth Amendments

to the United States Constitution. This dispute challenges a Party requirement that all persons who wish to become a delegate to the statewide convention to nominate the Party's candidate for United States Senator must pay a nonrefundable registration fee, which is $ 45.00.[1] Jurisdiction of a three-judge district court is claimed on Counts 3 and 4 of the complaint under 42 U.S.C. §§ 1973c & 1973h and 28 U.S.C. § 2284(a).

This case was heard on May 18, 1994, pursuant to order of this court. Now pending before the court are the North Committee's motion to dismiss, the Party and County Committee's joint motion to dismiss, the plaintiffs' motion for a preliminary injunction and plaintiffs' motion for expedited discovery. We grant, as to Counts 3 and 4, the Party and County Committee's joint motion to dismiss. We deny, as to Counts 3 and 4, the plaintiffs' motions for a preliminary injunction and expedited discovery. We find we have no jurisdiction to consider Counts One, Two, and Five of the complaint, and we therefore do not address them. We also do not address the North Committee's motion to dismiss because the action against the North Committee is based solely on Count 5, over which we have no jurisdiction.

I

Taking the facts in the light most favorable to the plaintiffs, we find that on December 16, 1993 the Party issued a call for a state convention, to be held on June 3, 1994, to nominate the Party's candidate for United States Senator. Pursuant to the call, permitted by the Party plan, in order to become a delegate to the convention, the prospective

[1] The registration fee may also be described as $35.00.

delegate must pay a registration fee of $ 45.00, and be selected as a delegate. Delegates are selected in county or city mass meetings, conventions, or party canvasses. As a practical matter, anyone who follows the registration procedure may become a delegate to the state convention. The requirement that a prospective delegate pay a registration fee in order to participate in the Party's nominating process was not in effect on November 1, 1964, but has been authorized by the Party's plan at least since 1987.

The plaintiffs are all registered voters who wish to become delegates to the Party's June convention. Plaintiff Bartholomew was deterred from filing as a delegate by the $ 45.00 fee collected by the County Committee. Plaintiff Enderson was deterred from filing as a delegate in Hampton, Virginia by the $ 45.00 fee collected in Hampton.[2] When plaintiff Morse attempted to register for selection as a delegate at the County Committee's headquarters, he learned of the $ 45.00 fee, which was a larger sum than he currently had in his checking account. Upon inquiring whether he could file without paying the fee, he was informed by a worker at the County Committee's headquarters that some candidates would sponsor voters who supported them. Morse then left the County Committee's headquarters and borrowed the money to pay the fee. Upon his return, his filing form and payment were accepted. By inquiring further, he learned that if he supported Oliver North, he could be reimbursed his registration fee by the North Committee. He then accepted $ 45.00 from the county coordinator for the North Committee and was told that he was expected to be at the June convention. He later repaid the $ 45.00 to the North Committee.

[2] The local party committee for Hampton is not a party to the suit.

Having delayed five months, and almost on the eve of the state convention, plaintiffs filed this suit in which they plead five causes of action: The Party's imposition of a registration fee violates the Twenty-Fourth Amendment's prohibition of poll taxes (Count 1); the Party's imposition of a registration fee violates the Fourteenth Amendment's Equal Protection Clause (Count 2); the Party did not receive preclearance before implementing the registration fee requirement, and the fee is therefore in violation of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c (Count 3); the imposition of the registration fee prohibits people of limited means from participating in voting in violation of Section 10 of the Voting Rights Act, 42 U.S.C. § 1973h(a) (Count 4); and the North Committee's practice of paying registration fees for prospective delegates who indicate their support for North violates Section 11 of the Voting Rights Act, 42 U.S.C. § 1973i(c) (Count 5).

II

We first turn to the question of jurisdiction of a three-judge court. Plaintiffs' claims under Sections 5 and 10 of the Voting Rights Act, which are Counts 3 and 4 of the complaint, are actions which "shall be heard and determined by a (district) court of three judges." 42 U.S.C. §§ 1973c & 1973h(c); accord 28 U.S.C. § 2284(a); Charles A. Wright, The Law of Federal Courts § 50, at 297 n.14 (4th ed. 1983). A three-judge district court must be convened when so required by an act of Congress. 28 U.S.C. § 2284(a). However, Counts 1, 2, and 5 of plaintiffs' complaint, which allege two constitutional violations and a violation of Section 11 of the Voting Rights Act, 42 U.S.C. § 1973i(c), which addresses itself solely to criminal conduct, are not claims for which Congress has required the convening of a three-judge

court. We are aware that some three-judge district courts have taken the view that when a three-judge court has been properly convened for some claims in which such a court is required it may, in its discretion, exercise jurisdiction over other claims for which a three-judge court is not required. See, e.g., Armour v. Ohio, 775 F. Supp. 1044, 1048 (N.D. Ohio 1991); Tucker v. Montgomery Bd. of Comm'rs, 410 F. Supp. 494, 500 (N.D. Ala. 1976). However, the only district court decision in this circuit to address the question holds to the contrary and is the more persuasive, we think. We thus follow the three-judge panel of the United States District Court for the District of South Carolina which held, "Any rights asserted by the plaintiffs under other federal statutes or Constitutional provisions can be asserted only before the (single-judge) District Court." Gordon v. Executive Comm. of the Democratic Party of Charleston, 335 F. Supp. 166, 170 (D.S.C. 1971) (per curiam). We think the view of that court is consistent with the intent of Congress to limit the jurisdiction of three-judge courts, which resulted in the 1976 legislation repealing 28 U.S.C. §§ 2281 & 2282 and amending 28 U.S.C. § 2284.[3] See Act of August 12, 1976, Pub. L. No.94-381, 90 Stat. 1119 (1976); Wright, supra, at 296-97; see also Perez v. Ledesma, 401 U.S. 82, 87, 27 L. Ed. 2d 701, 91 S. Ct. 674 (1971) ("Even where a three-judge court is properly convened to consider one controversy between two parties, the parties are not necessarily entitled to a three-judge court and a direct appeal on other controversies that may exist between them." (footnote

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[3] In short, unless Congress has provided that a three-judge court must or may be convened to consider a particular claim, the claim may be considered only by a single judge of the district court. For a listing of some mandatory and permissive three-judge court claims, see Wright, supra, at 297 n.14.

omitted)). Accordingly, we do not consider Counts 1, 2, and 5 of the complaint.

III

Count 3 of the complaint alleges that the Party violated Section Five of the Voting Rights Act, 42 U.S.C. § 1973c, by implementing the registration fee requirement, which the Party admits was not in effect on November 1, 1964,[4] without first obtaining preclearance from the Attorney General of the United States. Section Five provides in relevant part:

> Whenever a State or political subdivision . . . shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964 . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color [or minority language group] . . . and unless and until the

[4] The Attorney General has determined that November 1, 1964 is the appropriate date to use in determining whether Virginia has enacted or sought to administer a different or new voting qualification, procedure, practice, or the like. 28 C.F.R. Part 51 Appendix; see 42 U.S.C. §§ 1973b(b) & 1973c.

> court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made.

42 U.S.C. § 1973c. Our task in this case is to determine whether a change in political party rules dealing not with primary elections, but instead with a party convention, canvass, or mass meeting, is subject to Section Five of the Voting Rights Act, 42 U.S.C. § 1973c.

As a general rule, political parties, to the extent they are empowered by the State to conduct primary elections for purposes of selecting national convention delegates, are subject to Section Five. See, e.g., MacGuire v. Amos, 343 F. Supp. 119 (M.D. Ala. 1972) (per curiam). Here, however, the Party is not conducting primary elections. Instead, local party members are selecting delegates to the state nominating convention, not through an election, but through local conventions, mass meetings, and party

canvasses. This distinction is meaningful, and because of it, we hold that the imposition of the registration fee challenged here is not subject to Section Five of the Voting Rights Act.

In support of our holding, we first rely on the regulations of the Attorney General. The regulation promulgated pursuant to Section Five makes the same distinction between voting in primary elections and other public electoral functions and other party activities. The regulation states:

> Certain activities of political parties are subject to the preclearance requirement of section 5. A change affecting voting effected by a political party is subject to the preclearance requirement: (a) If the change relates to a public electoral function of the party and (b) if the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of section 5. For example, changes with respect to the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms are not subject to the preclearance requirement. Changes with respect to the conduct of primary elections at which party nominees, delegates to party conventions, or party officials are chosen are subject to the preclearance requirement of section 5. Where appropriate the term "jurisdiction" (but not "covered jurisdiction") includes political parties.

28 C.F.R. § 51.7 (July 1, 1993). Here, there is no doubt that the Party is not conducting a primary election, and there is no voting as defined.[5] Therefore, under the terms of the regulation, the acts of the Party in this case are not subject to the preclearance requirement.

We also rely on another decision of a three-judge court. In Williams v. Democratic Party of Georgia, No. 16286 (N.D. Ga. April 6, 1972), aff'd, 409 U.S. 809 (1972), the court held that a Party's change in the method of selection of delegates to a national convention from a system in which the delegates were appointed by the party's last candidate for governor to a system in which delegates were chosen in open convention was not subject to the provisions of the Voting Rights Act. Williams, slip op. at 2, 6. Williams was cited and construed in MacGuire, 393 F. Supp. at 121 n.3, that the "Act does not protect one's right to participate in local conventions." Williams was summarily affirmed by the Supreme Court. 409 U.S. at 809. Summary affirmances, while not as conclusive as a formal written opinion, are judgments on the merits and entitled to some precedential weight. We are not free to disregard them. Southern Rwy. Co. v. Seaboard Allied Milling Corp., 442 U.S. 444, 462, 60 L. Ed. 2d 1017, 99 S. Ct. 2388 (1979); see also Hicks v. Miranda, 422 U.S. 332, 343-44, 45 L. Ed. 2d 223, 95 S. Ct. 2281 (1975).

In accordance with the Attorney General's regulation and the decision discussed above, we hold that the imposition of a registration fee on candidates for delegate to a state party convention who are not chosen in an election and are

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[5] "Voting" is defined as "all action necessary to make a vote effective in any primary, special, or general election." 28 C.F.R. § 51.2.

chosen by local convention, mass meeting, or party canvass is not subject to the Section Five preclearance requirement.

IV

Plaintiffs also allege that the imposition of the registration fee is in effect the requirement of the payment of a poll tax as a precondition for voting in violation of Section Ten of the Act, 42 U.S.C. § 1973h(a). Section Ten provides in relevant part:

> Authority of Attorney General to institute actions for relief against enforcement of poll tax requirement
>
> (b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment, section 2 of the fifteenth amendment and section 2 of the twenty-fourth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) of this section and the purposes of this section.

42 U.S.C. § 1973h(b). As is immediately apparent, the statute does not, on its face, authorize private actions for

violations of Section 10. See Allen v. State Bd. of Elections, 393 U.S. 544, 563, 22 L. Ed. 2d 1, 89 S. Ct. 817 (1969) (noting that Section 10 authorizes three-judge courts when the Attorney General brings an action under that section).

In Allen, the Court held that private litigants had standing to sue under Section Five of the Voting Rights Act. 393 U.S. at 557. Section Ten, however, does not contain similar language, but expressly authorizes the Attorney General to bring actions to enforce the section. See United States v. Solomon, 563 F.2d 1121, 1125 n.4 (4th Cir. 1977) (noting, in dictum, that Section Ten authorizes the Attorney General to sue for injunctive relief to prevent enforcement of a poll tax). Thus, we find no basis permitting the plaintiffs to sue under Section Ten. The statute specifically refers to "such actions," which are those instituted by the Attorney General.

V

As to Counts 3 and 4 of the complaint, we grant the Party and County Committee's joint motion to dismiss, but for the reasons expressed in this opinion. To the extent they relate to Counts 3 and 4, we deny the plaintiffs' motions for a preliminary injunction and expedited discovery. The plaintiffs may pursue Counts 1, 2, and 5 in the district court before a single judge should they be so advised.

An appropriate order will be this day entered.

ORDER OF MAY 18, 1994

In the United States District Court
for the Western District of Virginia
at Charlottesville

Fortis Morse, Kenneth Curtis Bartholomew, and Kimberly J. Enderson,	]	
Plaintiffs,	]	
	]	Civil Action No.
v.	]	94-0025-C
	]	
	]	Order
Oliver North for U.S. Senate Committee, Inc., Republican Party of Virginia, and Albemarle County Republican Committee,	]	
Defendants.	]	

ORDER

In accordance with the opinion filed on this date, it is ADJUDGED and ORDERED that Counts 3 and 4 of the complaint shall be, and they hereby are, dismissed with prejudice.

It is further ADJUDGED and ORDERED that the plaintiffs' motions for expedited discovery and a preliminary injunction shall be, and they hereby are, denied so far as they rely upon allegations which may support Counts 3 and 4 of

the complaint.

It is further ADJUDGED and ORDERED that the court declines to act upon Counts 1, 2 and 5 of the complaint, they being without the jurisdiction of the three-judge court.

It is further ADJUDGED and ORDERED that the motion for a preliminary injunction is denied so far as it depends on facts which may support Count 5 of the complaint, the three-judge court being without jurisdiction to decide the same.

The three-judge court has declined to grant any relief in this case. Should the plaintiffs be so advised to seek any other relief, they should address a request for the same to the district court of a single judge, and we express no opinion either as to the merits or any procedural aspect thereof.

Enter this 18th day of May, 1994.

/s/ H. Emory Widener
United States Circuit Judge

/s/ J. H. Michael, Jr.
United States District Judge
Western District of Virginia

/s/ James R. Spencer
United States District Judge
Eastern District of Virginia

STATUTORY PROVISIONS INVOLVED

SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, 42 U.S.C. § 1973c (1988):

§ 1973c. Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgment of voting rights; three-judge district court; appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or

subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the

provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court.

SECTION 10 OF THE VOTING RIGHTS ACT OF 1965, 42 U.S.C. § 1973H

§ 1973h Poll taxes

(a) Congressional finding and declaration of policy against enforced payment of poll taxes as a device to impair voting rights

The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) Authority of Attorney General to institute actions for relief against enforcement of poll tax requirement

In the exercise of the powers of Congress under section 5 of the fourteenth amendment, section 2 of the fifteenth amendment and section 2 of the twenty-fourth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political

subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) Jurisdiction of three judge district courts; appeal to Supreme Court

The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

NOTICE OF APPEAL, JUNE 8, 1994

Fortis Morse, Kenneth Curtis Bartholomew, and Kimberly J. Enderson,	]	
Plaintiffs,	]	
	]	No. 94-0025-C
v.	]	
	]	
	]	
Oliver North for U.S. Senate Committee, Inc., Republican Party of Virginia, and Albemarle County Republican Committee,	]	
	]	
Defendants.	]	

NOTICE OF APPEAL

Notice is hereby given that Fortis Morse, Kenneth Curtis Bartholomew, and Kimberly J. Enderson, plaintiffs in the above named case, hereby appeal to the Supreme Court of the United States of America from the order of the three-judge district court dismissing Counts 3 and 4 of the Complaint with prejudice and denying plaintiffs' Motion for Preliminary Injunction so far as it relies upon Counts 3 and 4 of the Complaint, entered in this action on May 18, 1994.

This appeal is taken under 28 U.S.C. § 1253 and 42 U.S.C. §§ 1973c, 1973h(c).

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Date: June 8, 1994